

**Department of State
Division of Publications**

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For Department of State Use Only

Sequence Number: 01-04-14
Rule ID(s): 5656
File Date: 1/8/14
Effective Date: 4/8/14

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. T.C.A. § 4-5-205

Agency/Board/Commission:	Environment and Conservation
Division:	Air Pollution Control
Contact Person:	Lacey J. Hardin
Address:	William R. Snodgrass Tennessee Tower 312 Rosa L. Parks Avenue, 15 th Floor Nashville, Tennessee
Zip:	37243
Phone:	(615) 532-0545
Email:	Lacey.Hardin@tn.gov

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1200-03-26	Administrative Fees Schedule
Rule Number	Rule Title
1200-03-26-.02	Construction and Annual Emission Fees

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Amendments

Chapter 1200-03-26 Administrative Fees Schedule

Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and substituting instead the following:

- (d)
1. Every source subject to this paragraph shall pay an annual fee of \$7,500.
 2. In addition to the annual fee of part 1 of this subparagraph, all sources with allowable emission rates greater than 250 ton per year (excluding carbon monoxide) shall pay the following:
 - (i) The rate at which major source actual-based annual emission fees are assessed for non-EGU sources shall be \$39.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for non-EGU sources shall be \$28.50 per ton.
 - (ii) The rate at which major source actual-based annual emission fees are assessed for EGU sources shall be \$56.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for EGU sources shall be \$45.50 per ton.
 3. The annual emission fee rates required by part 2 of this subparagraph remain in effect until the effective date of an amendment to this subparagraph. Any revision to these rates must result in the collection of sufficient fees to fund the activities identified in subparagraph (1)(c) of this rule. These fee rates shall be supported by the Division's annual workload analysis that is approved by the Board.
 4. For purposes of this subparagraph, an electric utility generating unit (EGU) means any steam electric generating unit or stationary combustion turbine that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected EGU.

Authority: T.C.A. §§ 68-201-101 et seq., and 4-5-201 et seq.

* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
J. Ronald Bailey				X	
Thomas Beehan				X	
John Benitez	X				
Elaine Boyd	X				
Karen Cisler	X				
Wayne T. Davis	X				
Stephen Gossett	X				
Shawn A. Hawkins				X	
Helen Hennon				X	
Richard Holland	X				
John Roberts	X				
Larry Waters	X				
Jimmy West	X				
Alicia Wilson	X				

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Air Pollution Control Board on 12/11/2013, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/09/13

Rulemaking Hearing(s) Conducted on: (add more dates). 12/03/13

Date: December 11, 2013

Signature: *Barry R. Stephens*

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary



Subscribed and sworn to before me on: December 12, 2013

Notary Public Signature: *Malcolm H. Butler*

My commission expires on: 1-11-2017

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

Robert E. Cooper, Jr.
Robert E. Cooper, Jr.
Attorney General and Reporter

1-7-14
Date

Department of State Use Only

Filed with the Department of State on: 1/8/14

Effective on: 4/8/14

Tre Hargett
Tre Hargett
Secretary of State

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Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. § 4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Comment: As long as the Division fulfills the commitments it made to work with the TCCI over the next year by providing additional detail regarding the breakdown of roles and services provided by each full-time employee and provides additional background data for the next year's fees, TCCI has no objection to the current proposed fee schedule.

Response: The Division will fulfill these commitments.

Comment: TCCI is supportive of finding an appropriate alternative methodology for calculating and assessing administrative fee for Title V sources that funds the program without penalizing industries for reducing the total tonnage of their emissions.

Response: The Department is willing to discuss this issue with representatives of the Chamber.

Comment: TCCI does not object to the proposed plan of application and the Title V fee increases included in the public hearing on Rule 1200-03-26-.02 and the Division's Workload Analysis as long as such increases are justified.

Response: No response necessary.

Comment: TCCI reserves the right, pursuant to Tenn. Code Annotated § 4-5-204(c), to present oral comments to the Board prior to its consideration and adoption of new fee rules and the workload analysis for 2013-2014.

Response: No response necessary.

Regulatory Flexibility Addendum

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process as described in T.C.A. § 4-5-202(a)(3) and T.C.A. § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

This rulemaking amendment to subparagraph (d) of paragraph (9) of rule 1200-03-26-.02 Construction and Annual Emission Fees is federally mandated and, hence, exempt from the provisions of the Regulatory Flexibility Act of 2007, Acts 2007, § 6 of Public Chapter 464. The rule subject to this amendment is part of the requirements of § 502(b)(3)(A) of the Federal Clean Air Act which is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title".

Impact on Local Governments

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

The Department anticipates that this amended rule will not have a financial impact on local governments.

Additional Information Required by Joint Government Operations Committee

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A) A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

Section 502(b)(3)(A) of the Federal Clean Air Act requires Tennessee, as an EPA approved program, to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title". Failure to meet this requirement would cause the state to be in violation of federal law and force EPA, among other consequences, to collect the fee from these sources using their presumptive fee rate; a significantly higher rate than is proposed. To collect this required annual fee, the Department proposes to amend its rules to collect an annual fee of \$7,500 from all major sources, and, for major sources with allowable emission rates that exceed 250 tons per year, an addition per ton fee based upon either actual emissions or permitted allowable emissions.

- (B) A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Section 502(b)(3)(A) of the Federal Clean Air Act is the source of the requirement for Tennessee to collect "an annual fee, or the equivalent over some other period, sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program requirements of this title".

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Owners and operators of major sources in the state. These sources recognize the necessity of the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Tennessee Air Pollution Control Board is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

It is estimated that this revision will result in increased state revenues of approximately \$846,500. The increase is necessary because employee salaries were increased as a result of the Mercer salary study and changes the Division is making to improve permitting efficiency. The Division has a backlog of Title V permits and permit amendments that must be reduced to meet our commitment to EPA. Expenditures are predicted to increase by approximately \$934,000 for the 2013-2014 fiscal year.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Lacey J. Hardin
Division of Air Pollution Control
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 15th Floor
Nashville, Tennessee 37243

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Jenny Howard
Deputy General Counsel

Office of General Counsel

- (H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

Office of General Counsel
Tennessee Department of Environment and Conservation
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Avenue, 2nd Floor
Nashville, Tennessee 37243
(615) 532-8685
Jenny.Howard@tn.gov

- (I) Any additional information relevant to the rule proposed for continuation that the committee requests.

The Tennessee Air Pollution Control Board is not aware of any.

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Paragraph (9) of Rule 1200-03-26-.02 Construction and Annual Emission Fees is amended by deleting subparagraph (d) in its entirety and substituting instead the following:

- (d) 1. Every source subject to this paragraph shall pay an annual fee of \$7,500.
2. In addition to the annual fee of part 1 of this subparagraph, all sources with allowable emission rates greater than 250 ton per year (excluding carbon monoxide) shall pay the following:
- (i) The rate at which major source actual-based annual emission fees are assessed for non-EGU sources shall be ~~\$40.00~~ \$39.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for non-EGU sources shall be ~~\$29.50~~ \$28.50 per ton. ~~Notwithstanding any calculation of an annual fee using these rates, the annual fee that each major source is to pay shall not be less than \$7,500~~
 - (ii) The rate at which major source actual-based annual emission fees are assessed for EGU sources shall be \$56.00 per ton and the rate at which major source allowable-based annual emission fees are assessed for EGU sources shall be \$45.50 per ton.
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* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
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John Benitez	X				
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Shawn A. Hawkins				X	
Helen Hennon				X	
Richard Holland	X				
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Jimmy West	X				
Alicia Wilson	X				

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I further certify the following:

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Date: December 11, 2013

Signature: _____

Name of Officer: Barry R. Stephens

Title of Officer: Technical Secretary

Subscribed and sworn to before me on: _____

Notary Public Signature: _____

My commission expires on: _____

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

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Attorney General and Reporter

Date

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Tre Hargett
Secretary of State

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Owners and operators of major sources in the state. These sources recognize the necessity of the rule.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

The Tennessee Air Pollution Control Board is not aware of any.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

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Jenny Howard
Deputy General Counsel

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